

THE HON'BLE MR. JUSTICE AB PAL

Heard the learned counsel for the parties.

2. The petitioner, Smt. Deepali Goswami is the wife of Late Prabhat Ch. Goswami, who was an employee of the Assam State Electricity Board (for short ASEB) and died-in-harness on 29.9.01. He was due to retire from service on 1.3.02 as per his date of birth in his service record being shown as 1.3.1944. The date of his birth was apparently recorded on the basis of a certificate issued by the Head Master of Uttar Betna H.E. School on 2.7.66 where he studied. After his death, his wife, the petitioner herein, approached ASEB for release of family pension and other pensionary benefits, but the same was denied to her on the ground that the date of birth of her husband was rectified from 1.3.1944 to 1.12.1941 on the basis of a certificate obtained from the Secretary, Board of Secondary Education, Assam issued on 25.10.02, after the death of her husband, by the order dated 31.3.03 of the Executive Engineer, Bongaigaon, Electrical Division, which has been annexed herein as Annexure-2. It has further been directed that the excess period of service with effect from 1.12.1999 to 29.9.2001 is to be regularized as per the order dated 18.9.97 by recovering the overdrawn amount from his gratuity and other post retirement benefits.

The limited question raised in this writ petition is whether such an order for recovery is legally sustainable and whether on this ground alone the petitioner can be denied the family pension and other pensionary benefits, which are due to her for the service rendered by her husband.

3. The controversy, which has emerged from the rival pleadings, centers round the age of the deceased. Admittedly, at the time of his appointment he did not pass the school leaving examination. The Head Master of the school, where he studied, certified, presumably on the basis of the school record, that his age was 22 years when he was reading in that school in 1966. The said certificate mentioned no date of birth. The certificate obtained after the death of the petitioner by ASEB from the Secretary, Board of Secondary Education, Assam, has not given the date of birth of the deceased. Again it cannot be accepted as a formal certificate issued by the Board. The reason is that the certificate has been issued under the caption To whom it may concern. According to that certificate the deceased passed HSLC examination in 1976 at the age of 34 years 3 months 10 days on 1.3.1976. After obtaining this certificate the order impugned was passed on 31.3.03 directing recovery of the overdrawn amount of the period the deceased served after his due date of retirement on 30.11.99.

4. The above controversy can be answered only with the observation that the certificate obtained later, after the death of the husband of the petitioner, cannot be the basis to change the date of birth in the Service record made on the basis of the earlier certificate obtained in 1966. It cannot be urged at this stage, after his death, that he submitted a false certificate at the time of entry into the service. The certificate issued by the Head Master, presumably on the basis of the school record, cannot be said to be false. Nonetheless, the same was accepted by the authority and allowed the deceased to serve till his death. It would not be fair on the part of the ASEB to turn around and say the date of birth is wrong and to recover from the pensionary benefit the salary drawn by him for the services rendered.

5. For the reasons and discussions aforementioned, this writ petition has merit and the same is allowed setting aside and quashing the order dated 31.3.03 (Annexure-2 of the writ petition) issued by the Executive Engineer, Bongaigaon Electrical Division, ASEB and directing the respondents concerned to release the family pension and other pensionary benefits admissible to the petitioner without any deduction. The respondents shall comply with the above direction.

ithin a period of 2 (two) months from the date of receipt of certified copy of t
his judgment and order.
No cost.